88-1965

No. _____

Supreme Court, U.S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1988

PATRICIA THOMPSON
EDDIE THOMPSON, JR.

Petitioners

vs.

CITY OF COVINGTON, THOMAS EPPERSON, TODD FINAN, HENRY WARDEN, JOSEPH CONDIT, JOHN ELFERS, DOUGLAS STEPHENS, PEOPLES LIBERTY BANK, RICHARD NELSON, RALPH HAILE, AND UNNAMED PERSONS

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF KENTUCKY

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QUESTIONS PRESENTED

(1) Does the instant complaint as a whole, show conclusively, on its face, that Petitioners' claims are barred by the statute of limitations?

(2) Does a State Court violate Article IV, § 1, U.S. Constitution; Bill of Rights § 1, 2, 14, Kentucky Constitution, and K.R.S. 422.040, when the State Court refused to give full faith and credit to its records and judicial proceedings?

Or alternately,

Must Kentucky Courts give full faith and credit to the records and judicial proceedings of all federal and State Courts of the United States as well as the records and judicial proceedings of its own Court?

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FEDERAL CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Full Faith and Credit shall be given in each state to the Public Acts, Records and Judicial Proceedings of every other state. And the Congress may by general laws prescribe the manner in which such Acts, Records and Proceedings shall be proved, and the effect thereof. Article IV, § 1, U.S. Const.

Congress shall make no law respecting . . . the right . . . of people to petition the government for a redress of grievances. 1st Amend., U.S. Constitution.

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. 14th Amendment, U.S. Constitution.

KENTUCKY CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

(2) Any justice or judge of the Court of Justice or master commissioner shall disqualify himself in any proceeding:

(a) Where he has a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceeding;

(b) Where in private practice or government service he served as a lawyer or rendered a legal opinion in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter in controversy, or the judge, master commissioner or such lawyer has been a material witness concerning the matter in controversy.

(2) (e) 4. Is to the knowledge of the judge or master commissioner likely to be a material witness in the proceeding.

(3) (a) Any justice or judge of the Court of Justice disqualified under the provisions of this section shall be replaced by the chief justice. K.R.S. 26A.015.

IN THE

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CITY OF COVINGTON, THOMAS EPPERSON, TODD FINAN, HENRY WARDEN, JOSEPH CONDIT, JOHN ELFERS, DOUGLAS STEPHENS, PEOPLES LIBERTY BANK, RICHARD NELSON, RALPH HAILE, AND UNNAMED PERSONS

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF KENTUCKY

Comes now Petitioners, Patricia and Eddie Thompson, Jr., (hereinafter Petitioners) and respectfully pray that a Writ of Certiorari issue to review the Judgment of the Kentucky Court of Appeals, entered in an unpublished decision on August 19, 1988, (App. P. 29a) Motion for Discretionary Review Denied on March 8, 1989. (App. P. 33a)

OPINION BELOW

The Order of the Kenton Circuit Court was entered on April 23, 1987, (NR 35, Rec. P. 112, App. P. 22a) Notice of Appeal was filed on May 21, 1987. NR 36.

JURISDICTION

The Federal Question was raised when the Trial Court refused to give full faith and credit to a Judgment of the Kentucky Court of Appeals. (NR 1, Ex. E, Rec. P. 1, App. P. 18a)

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1257(3).

Motion for Discretionary Review was Denied on March 8, 1989 by the Kentucky Supreme Court, (App. P. 33a) and this Petition for a Writ of Certiorari is filed within ninety (90) days of that date.

The following Decisions of this Court sustain jurisdiction:

Estelle v. *Gamble*, 429 U.S. 97, 106 (1976)
Haines v. *Kerner*, 404 U.S. 519, 92 S. Ct. 594
Hancock National Bank v. *Farnum*, 176 U.S. 640 (1900)
Iron Mountain and Helena Railroad v. *Johnson*, 119 U.S. 608, 30 L. ed. 504
Johnson v. *Muelberger*, 340 U.S. 581, 95 L. ed. 552
Milliken v. *Meyer*, 311 U.S. 457, 85 L. ed. 278 (1941)

STATEMENT OF FACTS

On September 12, 1986, Petitioner filed the instant complaint and interrogatories in Kenton Circuit Court. (NR 1, Rec. P. 1, App. P. 5a)

All four (4) Kenton Circuit Judges disqualified themselves without stating their reasons therefor. (NR 13)

After disqualifying himself,* Kenton Circuit Judge Raymond E. Lape, Jr., doubling as Chief Regional Judge, Sixth Region of Judicial Circuits, appointed the Honorable Jack Arnold, Harrison Circuit Judge, as special Judge to hear the case. There is no indication that Judge Arnold ever came to Kenton County.

All Respondents filed a Motion to Dismiss, blandly asserting that causes of action should be barred by applicable statute of limitation and res judicata. (City of Covington, Warden, Epperson and Finan, NR 12, 15, Rec. P. 40, 46, Elfers, NR 17, Rec. P. 52, Condit and Stephens, NR 19, Rec. P. 60, People Liberty, Haile, and Nelson, NR 22, Rec. P. 69) At the time the Motions to Dismiss were filed, time to plead had expired to all except City of Covington, Warden, Epperson, and Finan.

---

* (In 2 cases, 17936, styled *The Commonwealth of Kentucky, for the use and benefit of the City of Covington, Ky.* v. *Patricia Thompson* and 18227 A & B, styled *The Commonwealth of Kentucky, for the benefit of the City of Covington, Ky.* v. *Eddie Thompson, Jr.*, Judge Lape had declined to enter final orders in the cases. In an Order dated August 3, 1979, in case 17936, styled *Commonwealth of Kentucky, for the use and benefit of the City of Covington, Ky.* v. *Patricia Thompson*, Judge Lape ordered the cash bond returned to depositor and Petitioner placed on her own recognizance until further orders of the Court. As of today, the Kenton Circuit Court has not entered any further order in the matter. Petitioner is still on her own recognizance. See Complaint NR 1, #7(f), 27, 29. On or about August 19, 1988, Petitioner filed a Writ of Mandamus to compel Judge Lape, *inter alia*, to enter final orders in 17936 and 18227 A & B. The Kentucky Court of Appeals denied the Petition for Writ of Mandamus, *Thompson* v. *Lape*, 88-CA-1783-OA. The Kentucky Supreme Court affirmed on March 16, 1989, *Thompson* v. *Lape*, 88-SC-877-MR.)

Petitioners filed Responses to Motions to Dismiss on October 14, 1986, (NR 16, Rec. P. 47) and October 27, 1986, (NR 20, Rec. P. 85) In the Response filed on October 27, 1986, Petitioners objected to Kenton Circuit Court Judge Lape appointing a Special Judge as being in violation of K.R.S. 26A.015, 26A.020.

On November 12, 1986, Petitioners filed a Motion for Default Judgment. (NR 25, Rec. P. 86)

On November 17, 1986, the Court Ordered that all pending Motions would stand submitted to the Court without oral arguments on December 2, 1986, and that an party desiring to file a memorandum or other document of record in support or in opposition to a pending motion may do so by December 2, 1986, NR 26, Rec. P. 89)

On December 1, 1986, Petitioners filed a Memorandum of Law. (NR 32, Rec. P. 102) In that Memorandum, Petitioners objected to a ruling on any Motions without a hearing. On March 18, 1987, Petitioners moved the Court to issue its Ruling on all pending Motions. (NR 34, Rec. P 110). The Court ruled on May 21, 1987 (NR 35, Rec. P. 112, App. P. 22a)

REASONS FOR GRANTING THE WRIT

(1) Does the instant complaint as a whole show conclusively, on its face, that Petitioners' claims are barred by the statute of limitations?

A fair reading of the complaint reveals that by duress, defendants criminally prosecuted Petitioners and effected an illegal foreclosure on real estate owned by Petitioners. (see complaint NR 1) and after the foreclosure, Peoples Liberty Bank filed a possessory action, which Peoples Liberty Bank and its attorney, Mr. Nelson, admits the bank loss. (Ex. E, Judgment of the Kentucky Court of Appeals rendered May 2, 1980, complaint item #12, 13)

After Petitioner disregarded Mr. Nelson's letter to move, dated April 3, 1978, Mr. Nelson had Judge Goodenought to sign a Writ of Possession dated April 12, 1978, without notice to Petitioners and on April 15, 1978, three (3) police officers beat and threatened to put Petitioner (Eddie) in the river. (complaint item #34-44)

On July 19, 1978, Peoples Liberty Bank leased Petitioners home to two (2) police officers of the City of Covington and had the Sheriff to execute the Writ of Possession signed by Judge Goodenough on April 12, 1978, without notice to Petitioners.

Before the instant action was filed, Petitioner had filed three (3) Civil Rights suits and interrogatories in Federal District Court in Covington.

The cases in Federal Court were *Thompson* v. *Nelson* 78-57, *Thompson* v. *Slukich, et al.* 78-70, and *Thompson* v. *Peoples Liberty Bank, et al.* 79-40. The Federal Judge declined to decide, in his discretion, the civil rights issues before the Court, because of the state law issues present. The District Court dismissed on October 29, 1980. The Sixth Circuit Court of Appeals affirmed on March 10, 1983, in an unpublished decision, *Thompson* v. *Nelson*, 81-5784, 709 F 2d 1509, *certiorari denied* on October 3, 1983, 82-2122, 464 U.S. 829.

In the Federal Court, Petitioners had alleged, *inter alia*, an illegal foreclosure, unlawful hiring of on-duty City of Covington Police Officers in the forcible and unlawful taking of Petitioners' personal and real properties, malicious persecution, false arrest, false imprisonment, harassment, wanton endangerment, wanton misconduct, unlawful attempts and threats upon Petitioners' lives. (Basically the same allegations filed here. NR 1 App. P. 5a.)

The Federal Court ordered all matters consolidated, without objections from any party, and further ordered Mr. Nelson to file in Federal Court all State Court Records relevant to the case. (79-CA-1456-MR) Mr. Nelson failed to file the State Court Records in Federal Court, but Mr. Nelson did admit that: (1) the bank lost the possessory action in the illegal foreclosure in State Court, (NR 1, Ex. E, App. P. 18a), (2) after losing the possessory action, the bank took Petitioners' home and personal possessions without a valid Writ of Possession, (3) the bank leased Petitioners' home and personal possessions to two (2) police officers employed by the City of Covington for two hundred ($200) dollars a month; (4) the bank hired at least seven (7) police officers employed by the City of Covington at five ($5) dollars an hour to occupy Petitioners' home and to keep Petitioners out, and (6) that one of the seven (7) police officers hired by the bank, (Todd Finan) was involved in the beating and threatening of Petitioner's (Eddie) life on April 15, 1978. (See Complaint #34-41)

None of the defendants filed an answer and we may note none have pleaded a statute of limitation.

THE STATUTE OF LIMITATION

As we peruse the Pro Se complaint in the instant case, we are bound to ask: What were the factual bases for the State Court to conclude that the one (1) or five (5) year statute of limitation was applicable? The trial court only considered about sixty (60) per cent of the allegations in the complaint.

In a memorandum annexed to his motion to dismiss, filed by Mr. Nelson on November 7, 1986, (NR 22, Rec. P. 71) Mr.

Nelson said, "It is difficult to determine which statute of limitation applies . . ."

In the complaint, Petitioners alleged that some of the false criminal charges against them are still pending. (See Complaint NR 1, #27-33, App. P. 10a)

> Limitation can never run while acts which commence statutory period cannot continue to run. *Com. D of Hous. Bldgs. and Const.* v. *Collins*, 654 S.W. 2d 608 (KY CA 1983).
>
> The defense of limitation may be properly raised by a motion to dismiss where "complaint shows that the action was not brought within the statutory period" (cite omitted). Dismissal of a complaint because barred by the applicable statute of limitations is proper, however, only "when the statement of the claim affirmatively shows that the plaintiff can prove no set of facts that would entitle him to relief" (Cite omitted). Absent evidentiary hearing, dismissal of complaint as time-barred was improper where complaint alleged facts that might toll statute of limitations. Furthermore, the complaint must be liberally construed in determining whether the complaint is time-barred. *Duncan* v. *Leeds*, 742 F 2d 989, 991 (U.S.C.A. 6th Cir. 1984).

Notwithstanding the fact that all defendants know that Peoples Liberty Bank and Mr. Nelson have admitted in Kentucky Court of Appeals case (*Thompson* v. *Peoples Liberty Bank*, 79-CA-1456-MR) and in U.S. District Court — Covington cases (*Thompson* v. *Nelson*, 78-57; *Thompson* v. *Slukich, et al.*, 78-70; *Thompson* v. *Peoples Liberty Bank*, 79-40 [709 F 2d 1509, *certiorari denied* on October 3, 1986, 464 U.S. 829] that Petitioners won the right to possession of their property, Peoples Liberty Bank still holds itself out to the world as legal owner. Obviously, Petitioners are in jeopardy as long as this situation exists and Peoples Liberty Bank could, of course, acquire title by adverse possession. No defendant has claimed adverse possession.

In Kentucky, as well as other states:

> The burden of proving any affirmative defense is on the one asserting the defense. *Desjardins* v. *Desjardins*, 308 F 2d 111, 116 (6th Cir. 1962); *Brush* v. *Olivo*, 81 A 2d 852.

Thus, the burden is on the defendant.

> This burden is not shifted merely by failing to plead the affirmative defense, though failure to so lead may, in fact, deprive a defendant of that defense. (See *American Oil Pump and Tank Co.* v. *Sizemore*, 276 S.W. 558.)

A suit arising on continuing mortgage dispute or judgment is 15 years. K.R.S. 413.090.

Action for recovery of real property may be brought only within fifteen years after the right to institute it first accrued to the plaintiff, or to the person through whom he claims. K.R.S. 413.010.

PRO SE COMPLAINTS

> A body of law has developed that embraces the rule that Pro Se complaints are to be liberally construed. *Haines* v. *Kerner*, 404 U.S. 519, 520 (1971).
>
> No matter how inartfully pleaded, a Pro Se complaint must be held to less stringent standards than formal pleadings drafted by attorneys and can only be dismissed if it appears, "beyond doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief." *Estelle* v. *Gamble*, 429 U.S. 97, 106 (1976).

Petitioners filed a 96 paragraph complaint.

The trial court, without due consideration of the facts alleged by Petitioners, concluded that petitioners' action was barred by the statute of limitation, but cited no facts or case

law to support its conclusions. Furthermore, the trial court concluded, without factual basis therefor, that certain named defendants were entitled to immunity from prosecution.

The Defense of limitation technically cannot be adjudicated on a motion under Ky. CR 12.02. According to this concept, a motion to dismiss or to strike can only attack matters appearing on the face of the complaint. No defendant had claimed that petitioners are not the legal owner of the real property in question here or that petitioners don't have a valid claim. Ky. CR 12.04 Preliminary hearing provides that: the defenses and relief enumerated in Rule 12.03, whether made in pleading or by motion, shall be heard and determined before trial on application of any party unless the court orders that the hearing and determination thereof be deferred until trial.

Thus, in practice, courts that allow the adjudication of affirmative defenses on a motion to dismiss or for judgment on the pleadings are converting these motions into summary judgment motions and will normally give all parties the opportunity provided by Rule 56 to present pertinent evidentiary material to the court. Ky. CR 8, analysis 3, Bertleman and Phillip, p. 161, citing Wright and Miller F.R.C.P. § 1277, P. 329, 331, 336, 337.

Case law provides that summary judgment motions generally cannot be granted prior to discovery. Where a summary judgment motion is before the court, the parties are entitled to a hearing on the motion. If the non-moving party has not had the opportunity to make discovery, the motion for summary judgment should be denied. *Celotex* v. *Catrett*, 106 S.Ct. 2548 (1986).

QUALIFIED OR ABSOLUTE IMMUNITY

The trial court concluded that certain defendants enjoyed either qualified or absolute immunity from suit. No finding of facts were made by the court in this regard. As stated in the complaint, Petitioners alleged that these defendants acted

maliciously, without any cause and outside their authority to aid and abet Peoples Liberty Bank in its breach of its mortgage contract with Petitioners.

Neither Condit, Elfers or Stephens are entitled to absolute or qualified immunity, where, as in the instant case, it is alleged that they acted in clear absence of all jurisdiction. (See *Stump* v. *Sparkman*, 435 U.S. 349, 355-357 (1978), and *Duggar* v. *Off. 2nd, Inc.*, 612 S.W. 2d 756 (Ky 1980). To the contrary, the absolute immunity afforded judges or prosecutors only applies to acts committed within their judicial jurisdiction. *Pierson* v. *Ray*, 386 U.S. 547, 554-555 (1967).

As Kenton County Attorney, did Mr. Elfers have jurisdiction to sign a warrant for Petitioner's arrest, at the instance of a stranger to a foreclosure proceeding, where Petitioners had traversed Peoples Liberty Bank's forcible detainer action and posted bond satisfactory to the Court, thereby staying the execution of the Writ of Restitution, and said Writ of Restitution being voluntarily forfeited by Mortgagee? Did Mr. Elfers have jurisdiction to prosecute a mortgagor for alleged criminal trespassing (where mortgagee voluntarily forfeits rights to possession of the property) at the instance of a stranger to the foreclosure proceedings?

Without any discussion, it's clear that Mr. Elfers had no jurisdiction to sign a warrant for Petitioner's arrest on alleged criminal trespassing or jurisdiction to prosecute Petitioners on these false charges.

The truth of the matter is Mr. Elfers signed the warrant because no Judge would sign the warrant.

As city officials, what jurisdiction did Mr. Condit and Mr. Stephens have to prosecute Petitioners on the false charges in Kenton Circuit Court cases #17936 and #18227 A & B (See Complaint NR 1, #7(f), 27-33)? These charges linger today. Can the statute of limitation run while these charges are pending?

Mr. Condit and Mr. Stephens became District Court

Judges. They had refused to sign the warrant (at the instance of the stranger to the foreclosure) charging Petitioner with criminal trespassing on the mortgaged property (Petitioners' home). But, after Mr. Elfers signed the warrant, Judge Condit and Judge Stephens ordered Petitioner not to go home. As District Judges, Condit and Stephens had no jurisdiction over matters affecting title to real estate.

K.R.S. 24A.120 provides:

> District Court shall have exclusvie jurisdiction in: (1) Civil cases in which the amount in controversy does not exceed twenty-five hundred dollars ($2,500), exclusive of interest and cost except matters affecting title to real estate and matters of equity.

Whether an official is protected by absolute or qualified immunity generally turns on the objective legal reasonableness of the action assessed in light of the legal rules that were established at the time the acts occurred. *Anderson* v. *Creighton*, 107 S.Ct. 3034, 3039 (1987); *Harlow* v. *Fitzgerald*, 457 U.S. 800, 818-819 (1982).

Absolute or qualified immunity is an affirmative defense that should be raised as part of the answer to the complaint. No timely answers have been filed in the instant matter. Thus, the defense was improperly before the court. Notwithstanding the fact that the matter was improperly before the Court, and without waiving our objections to such consideration, Petitioners assert that once the immunity defense had been properly raised, then Petitioners were entitled to a hearing and an opportunity to attack such defense by demonstrating that the officials claiming such immunity knew or should have known that their acts violated Petitioners' clearly established Federal and State Constitutional rights.

Clearly, there is nothing on the face of the instant complaint to show that the statute of limitation bars any claim.

(2) Does a state court violate Article IV, § 1, U.S. Constitution, Bill of Rights § 1, 2, 14, Kentucky Constitution, K.R.S. 413.090 and K.R.S. 422.040, when the state court refused to give full faith and credit to its records and judicial proceedings?

Or alternately,

Must Kentucky Courts give full faith and credit to the records and judicial proceedings of all federal and state courts of the United States as well as the records and judicial proceedings of its own courts?

Once the federal court consolidated issues, that ruling was binding in state court. *Thompson* v. *Nelson, et al.*, 78-57, 78-70, 79-40, 709 F 2d 829, *certiorari denied*, October 3, 1983, 464 U.S. 829.

> Final adjudication of material issues by a court of competent jurisdiction binds the parties in any subsequent proceedings between them, irrespective of difference in forms or causes of actions. *Mansker* v. *Dealers Transport Co.*, 116 N.E. 2d 3, 6.

It is well settled,

> In this state a judgment foreclosing a mortgage as commonly expressed, does not divest title or confer possession. *Springfield Fire and Marine Ins. Co.* v. *Phillips*, 16 K.L.R. (Abstract) 390.
>
> Nor does the mortgage convey an estate in the land to the mortgagee. *Morgan* v. *Wickliffe*, 24 K.L.R. 1039 70 S.W. 680 (1902).

That brings us to the Opinion of the Kentucky Court of Appeals rendered on May 2, 1980, by unpublished decision, in *Thompson* v. *Peoples Liberty Bank*, 79-CA-1456-MR, Discretionary Review Denied by the Supreme Court of Kentucky in 80-SC-444-D, *certiorari denied* by the U.S. Supreme Court in 80-1358, April 20, 1981, 451 U.S. 909.

In that case, Mr. Nelson told the Kentucky Court of Appeals and the Federal District Court, at a pre-trial conference in *Thompson* v. *Nelson, et al.*, 78-57, 78-70, 79-40: "The record in this case speaks for itself and as previously stated in an earlier motion to dismiss this appeal, Appellee states that this may be the only case in history where a SUCCESSFUL PARTY has appealed a victory. The appellee sought possession of a piece of property through a forcible detainer action and later, in effect, with leave of court, dismissed the action with prejudice. The dismissal was at the cost of appellee. It is difficult to argue why a loss should not have been a loss when the loss was requested by the losing party."

In effect, Mr. Nelson was conceding the bank had lost the case in federal and state courts.

> The Judgment of a circuit court in proceeding for possession subsequent to execution is conclusive, so long as it remains in force, as to the right of possession of the property therein described. *Comb* v. *Johnson*, 80 S.W. 506.

The judgment in *Thompson* v. *Peoples Liberty Bank*, 79-CA-1456-MR, had the effect of barring Peoples Liberty Bank's claim of title to land in dispute. *Hub Bel Air, Inc.* v. *Hirsh*, 102 A 2d 550.

It is obvious that the Peoples Liberty Bank or anyone holding under them are holding Petitioners' real property by adverse possession.

> It is fraud to sell land which the seller does not own. *Old Nat. Life Ins. Co.* v. *Bibbs*, 184 S.W. 2d 313 (CA Texas 1944).

K.R.S. 422.040. COURT RECORDS OF OTHER STATES AND THE UNITED STATES ENTITLED TO FULL FAITH AND CREDIT, Provides:

> The records and judicial proceedings of *any court of any state*, attested by the clerk thereof in due form, with the seal of court annexed if there be a seal, and certified by

> the judge, Chief Justice, or presiding magistrate of the court, shall have the same faith and credit given to them in this state as they would have at the place from which the records come. The record and judicial proceedings of any court of the United States attested by the clerk thereof, with the seal of the court annexed if there be a seal, shall have the same faith and credit given to them in this state as they would have in the courts of the United States.

Petitioners think it is clear that "records and judicial proceedings of any court of any state" includes records and judicial proceedings of any Kentucky court.

When the Kentucky courts refused to give full faith and credit to its decision in *Thompson* v. *Peoples Liberty Bank*, 79-CA-1456-MR (NR 1, Ex. E, App. P. 18a), the Kentucky courts violated Article IV, § 1, U.S. Constitution, First, Fourteenth, Fifteenth Amendments to U.S. Constitution, Bill of Rights § 1, 2, 14, Kentucky Constitution and K.R.S. 413.090, 422.040.

> Where a judgment appears on its face to be a record of a court of general jurisdiction, it will be presumed that the court had jurisdiction over the cause and the parties, unless this is disproved by extrinsic evidence or by the record. *Milliken* v. *Meyer*, 311 U.S. 457, 85 L. ed. 278 (1941).

The right asserted by Petitioners to have the Kentucky Judgment (79-CA-1456-MR, *Thompson* v. *Peoples Liberty Bank*) enforced in the Kentucky courts is one arising under Article IV, § 1, the U.S. Constitution and § 1, 2, 14, Kentucky Constitution and Statutes. And since the existence of the federal right turns upon the legal effects of the proceedings in the Kentucky state court, the proceedings in Federal District Court (*Thompson* v. *Nelson*, 78-57, 78-70, 79-40, affirmed on appeal, 709 F 2d 1509, *certiorari denied*, October 3, 1983) and the validity of the judgments therein,

the rulings (App. P. 22a, 29a) by the Kentucky courts are reviewable here.

In this case, it is the state and federal judgments that seek full faith and credit as required by federal law. No statute of limitation is tendered that would cut off a cause of action on the judgment for possession in 79-CA-1456-MR nor is any authority cited to prevent the federal court from consolidating all issues in the case. (78-57, *Thompson* v. *Nelson, et al.*) Respondents are actually estopped by the Federal Judgment from trying to split issues here. (F.R.C.P. 42(a).

> A judgment of a Circuit Court of the United States must be given the same effect in other states that it is entitled to in the state in which it is rendered, and that is the same as if it were a judgment of a state tribunal of equal authority. *Hancock National Bank* v. *Farnum*, 176 U.S. 640.
>
> The federal purpose of the full faith and credit clause makes the Supreme Court of the United States, for both state and federal courts, the final arbiter when the question is raised as to what is permissible limitation on the cause. *Johnson* v. *Muelberger*, 340 U.S. 581, 95 L. ed. 552.
>
> Action to quiet title was not barred by statute of limitation, since a cloud of title continues to operate during the period of its existence. Hence, the right to maintain an action to quiet title is a continuing one to which limitation is not applicable. *Williams* v. *Thomas*, 149 S.W. 2d 525 (Ky 1941).
>
> *An action upon a judgment or decree of any court of this State* or of the United States, or of any state or territory thereof, the period to be computed from the date of the last execution thereon; and shall be commenced within fifteen (15) years after cause of action accrued. K.R.S. 413.090(1).
>
> The dismissal of a prior action by a federal district court for lack of subject matter jurisdiction does not require

that the present action be dismissed on grounds of res judicata or statute of limitation. *Denehy* v. *St. John's Queen Hosp.*, 495 N.Y.S. 2d 479 (1985).

THE MERITS

The exception of no cause of action is triable on the face of the complaint. *Escat* v. *The National Bank of Commerce in New Orleans*, 284 So. 2d 832 (CA LA 1973).

None of the defendants denied any of the allegations in Federal Court or filed a timely answer in the Kenton Circuit Court. For that reason Petitioners filed a motion for default judgment. (CR 55.01) The trial court did not rule on that motion.

For a wrongful foreclosure, the borrower has alternative and inconsistent remedies. He may let the wrongful foreclosure stand and ask for damages; or he may ask to have the wrongful foreclosure set aside and the situation restored which existed prior to foreclosure. *National Life Ins. Co.* v. *Silverman*, 454 F 2d 859 (D.C. Cir. 1971).

Petitioner submits that Defendants are not only liable for the wrongful foreclosure, but the wrongful acts of duress committed in carrying out the foreclosure.

In an action for slander to real estate, it is not essential to statement of cause of action that measure of damages be pleaded, the only requisite being that damage be alleged. *Ideal Saving Loan & Building Ass'n* v. *Blumberg*, 175 S.W. 2d 1015 (KY 1943).

An action at law for damage for wrongful foreclosure is an especially appropriate remedy where an innocent purchaser buys foreclosure, because it gives relief against guilty rather than innocent party. *Royall* v. *Yudelevit*, 268 F 2d 577 (D.C. Cir. 1959).

A mortgagee converting mortgaged realty and personalty is liable to mortgagor for the fair market value of the

property so converted, together with interest on the value of the property converted. *Murphy* v. *Wilson*, 314 P 2d 507 (CA Cal 1957).

A mortgagor is entitled to recover damages for wrongful or fraudulent foreclosure of mortgage, as where unlawful foreclosure is attempted solely from a malicious desire to injure the mortgagor; or he may receive damages where foreclosure is conducted negligently or in bad faith to his detriment. *National Mortgage Co.* v. *Williams*, 357 So. 2d 934 (Miss 1978).

DUE PROCESS OF LAW

Mortgagors were entitled to recover for mental suffering where a mortgagee's wrongful acts in attempting foreclosure, were a wilful misuse of its power of sale and could have been expected to humiliate and distress the mortgagors. *Morse* v. *Mutual Federal S & L Assn. of Whitman*, 536 F Supp 1271 (D.C. Mass 1982).

This Court held in *Reynolds* v. *Cochran*, 5 L. ed. 2d 754, that:

A State or Federal Court which arbitrarily refuses to hear a party (by counsel employed by and appearing for him in a case, Civil or Criminal), denies the party a hearing and therefore denies the party due process of law in the constitutional sense.

This Court held in *Hovey* v. *Elliot*, 42 L. ed. 215, that:

The right of a litigant to be heard is one of the fundamental rights of due process of law. A denial of the right requires a reversal.

The Kentucky Constitution § 1, provides, *inter alia*:

All men are, by nature, free and equal, and have certain inherent unalienable rights, among which may be reckoned:

> Fifth: The right of acquiring and protecting property.
>
> Sixth: The right of assembling together in a peaceable manner for their common good, and *of applying to those invested with the power of government for redress of greivances or other proper purposes, by petition, address or remonstrance.*

Section 2 provides:

> Absolute and arbitrary power over the *lives, liberty and property of freemen* exists nowhere in a republic, not even in the largest majority.

Section 14 provides:

> All Courts shall be open, and *every person* for an *injury* done him in his *lands, goods, person or reputation, shall have remedy by* due course of law, and right and justice administered without sale, *denial or delay.*

Kentucky Civil Rule 76.16 ORAL ARGUMENTS provides:

> (1) Oral Arguments on the merits will be heard in all cases appealed from the circuit court unless the appellate court directs otherwise on its own motion or on motion of one or more of the parties to the appeal. In any case where the court orders on its own motion that oral argument shall be dispensed with, an attorney shall have ten (10) days from date of the order in which to object and ask for reconsideration . . . .
>
> (4) A person who is not an Attorney at Law will be permitted to make an oral argument only with special leave of the court.

The Kentucky Constitution § 26 provides:

> To guard against transgression of the high powers which we have delegated, we declare that everything in this

> Bill of Rights is excepted out of the general powers of government, and shall forever remain inviolate; and all laws contrary thereto, or contrary to this Constitution, shall be void.

Petitioners' suit is based in part on Kentucky Judgments. The Kentucky state courts' refusal to consider the claim or permit a hearing on Petitioners' claims was a denial of due process.

Petitioners suggest that the denial of a hearing in the Circuit Court and the Denial of Oral Arguments in the Court of Appeals, pursuant to CR 76.16(4) is contra to the Kentucky Constitution § 1, 2, 14, and the First and Fourteenth Amendment to the U.S. Const.

In effect, the Kentucky courts denied Petitioners' rights of seeking redress in state court for injury done then in lands, goods, person and reputation, by due course of law.

CONCLUSION

The facts of this case are not in dispute. Respondents are in Default. This Court should reverse the Kentucky Court of Appeals, remand the case back with instructions to enter Default Judgment for Petitioners, and damages to be determined by a jury.

Patricia Thompson

Eddie Thompson, Jr.

APPENDIX

COMMONWEALTH OF KENTUCKY
COURT OF JUSTICE
THIRD DIV.

Case No. 86-CI-1535
Judge 616022
Court 616100
Kenton County

PATRICIA THOMPSON,
EDDIE THOMPSON, JR.,

Plaintiffs

vs.

CITY OF COVINGTON, THOMAS E. EPPERSON, TODD FINAN, HENRY WARDEN, JOSPEH CONDIT, JOHN ELFERS, DOUGLAS STEPHENS, PEOPLES LIBERTY BANK, RICHARD NELSON AND UNNAMED PERSONS,

Defendants.

CIVIL DOCKET

Jury Demand (X) $81.00 + $25.00 (I257651 + I257653)

Attorney: EDDIE THOMPSON, JR., PRO SE
and
PATRICIA THOMPSON, PRO SE
P.O. Box 1221
Covington, Ky. 41012

Date	Item	Proceeding
9/12/86	1	Complaint filed. Summons and 8 copies issued Kenton Co. Plaintiff filed Interrogatories.
9/12/86	2	Summons served on John R. Elfers, Kenton County Atty. by D.S. Radenheimer.
9/12/86	3	Summons served on Hon. Douglas Stephens by D.S. Radenheimer.
9/12/86	4	Summons served on Peoples Liberty Bank c/o Richard Nelson by D.S. Radenheimer.
9/17/86	5	Summons served on Joseph Condit for City of Cov. by D.S. Radenheimer.
9/19/86	6	Pltff. filed interrogatories propounded to deft, Epperson.
9/22/86	7	Summons served on Officer Tom Epperson by D.S. Radenheimer.
9/23/86	8	John Elfers, Kenton Co. Atty. moves for an extension of time until 11/7/86 to answer or otherwise plead; Affidavit filed.
9/22/86	9	Summons served on Henry Warden, Police Officer for City of Cov. by D.S. Radenheimer.
9/25/86	10	Defts. Peoples Liberty Bank, Richard Nelson & Ralph Haile move for an extension of time in which to answer or otherwise plead & further for an extension of time within which to answer the interrogatories.
9/26/86	11	Defts. Joseph Condit & Douglas Stephens move for an extension of time until 11/7/86 in which to answer or otherwise plead.
10/ 6/86	12	Deft. City of Cov., Henry Warden, Thomas E. Epperson & Tom Finan move to dismiss Argument filed in support of motion to dismiss.
10/ 7/86	13	Order certifying need for Special Judge Assignment.
10/ 7/86	14	Order assigning Jack Arnold as Special Judge.

10/ 7/86	15	Stephen T. McMurty filed Certificate of Service.
10/14/86	16	Pltff. filed reply to motion of City of Cov. to dismiss.
10/17/86	17	John Elfers moves to dismiss; Memorandum filed.
10/20/86	18	Defts. City of Cov., Officers Warden, Finan & Epperson filed affidavit & exhibits.
10/22/86	19	Defts. Condit & Stephens move to dismiss. Memorandum filed in support.
10/27/86	20	Pltffs. filed reply to motion to dismiss.
11/ 6/86	21	Deft. Epperson moves for a protective Order relieving him from answering interrogatories. Affidavit filed.
11/ 6/86	22	Defts. Peoples Liberty Bank, Richard Nelson & Ralph Haile moves to dismiss.
11/ 7/86	23	Deft. John Elfers filed answer.
11/ 7/86	24	Deft. John Elfers filed responses to interrogatories.
11/12/86	25	Pltff. move for default judgment.
11/17/86	26	Order submitting all pending motions without oral argument for 12/2/86.
11/19/86	27	Deft. City of Covington filed response to motion for default.
11/21/86	28	Defts. Nelson, Haile & Peoples Liberty Bank filed response to motion for default judgment.
12/ 1/86	29	Deft. Elfers filed response to motion for default judgment & response to court's order of 11/17/86.
12/ 1/86	30	Defts. Condit & Stephens filed resonse to motion for default judgment.
12/ 1/86	31	Defts. Condit & Stephens move for protective order or in the alternative for an extension of time to answer interrogatories.
12/ 1/86	32	Pltffs. filed Memorandum.
12/23/86	33	Defts. Condit & Stephens filed answer.

3/18/87	34	Pltffs. move the Court to issue its ruling on pending motions.
4/23/87	35	Order ruling on all pending motions. Copy certified to Hon. Nathan Goldman, Hon. Martin Huelsmann, Hon. Richard Nelson, Hon. Stephen McMurtry, Patricia Thompson and Eddie Thompson, Jr.
5/21/87	36	Pltffs. filed Notice of Appeal. (Cert. copies mailed to Patricia & Eddie Thompson, Jr., Hon. Nathan Goldman, Asst. Atty. General, Hon. Martin Huelsmann, Hon. Richard Nelson, Hon. Stephen McMurtry & Hon. John C. Scott, Clerk)

[CERTIFIED BY ED SCHROEDER, CLERK]

KENTON CIRCUIT COURT
THIRD DIVISION

NO. 86-C1-1535

PATRICIA THOMPSON
EDDIE THOMPSON, JR.
PLAINTIFFS

vs.

CITY OF COVINGTON:
THOMAS E. EPPERSON, TODD FINAN,
HENRY WARDEN
Police Officers;
JOSEPH CONDIT
Former City Manager, Ex. District Judge, City Solicitor;
JOHN ELFERS
Kenton County Attorney
DOUGLAS STEPHENS
Former District Judge and Former City Solicitor,
City of Covington;
PEOPLES LIBERTY BANK;
RICHARD NELSON:
RALPH HAILE AND UNNAMED PERSONS
DEFENDANTS

SERVE: Thomas Epperson, Henry Warden, Todd Finan
Covington Police Department
20th and Madison, Covington, KY

Joseph Condit
City Solicitor
18 Pike Street, Covington, KY

John Elfers
Kenton County Attorney
308 City-County Building, Covington, KY

Ralph Haile
Peoples Liberty Bank
6th and Madison, Covington, KY

Richard Nelson, Personally, and Attorney for Peoples Liberty Bank
11 W. 6th Street, Covington, KY

Judge Douglas Stephens
City-County Building
Third and Court Streets, Covington, KY

COMPLAINT

(Filed September 12, 1986)

Comes now Eddie Thompson, Jr., Plaintiff herein, and states his cause of action as follows:

1. Traditonally, Blacks in Kenton County have been criminally prosecuted [persecuted] in the Kenton County Courts, without proper regards for the law by local officials and with little or no chance of justice.

2. In 1963, someone, unknown to me, had procured a temporary drivers permit in my name. City of Covington Case No. 63-684. Ex. A.

3. That person was arrested for not having a licensed driver in the car.

4. The person arrested was released on his own recognizance, but did not show for court, and I was arrested.

5. I did not know the man who had been arrested, and the arresting officer verified in open court that I was not the man he had arrested with the temporary driving permit.

6. Because it was customary for all Blacks in Kenton County to have a criminal record at that time, this matter was placed on open docket; and so remains today [September 9, 1986]. Ex. A.

7. Since 1963 I have had a number of scrimmages with city and county officials over discrimination in employment and housing related matters:

(a) 1965 — City of Covington's efforts to block sale of

lot at 736 Highland Avenue to me because I was Black.

(b) 1965 — City of Covington's initial refusal to grant me a building permit for a house at 736 Highland.

(c) 1973 — City of Covington's refusal to fund the Covington Housing Development Corporation because Blacks had a visible role in the management of the corporation, and the Corporate Board had hired (me) a Black as its Executive Director.

(d) 1975 — City of Covington refused to allow me to participate in the rehab program for developers or its Section 8 Housing Assistance programs, because I was Black.

(e) 1977 — Sealed indictment procured on perjured testimony by City of Covington Police Officer Jim Mercer. Kenton Circuit Court No. 17932.

(f) 1977 — Malicious persecution by city officials for alleged violations of City's Housing Ordinances. Kenton Circuit Court No. 17936 and No. 18227 A & B.

(g) 1978 — False charges brought by police officers who had beaten me and threatened my life, which the City Commission neglected to hold a hearing on the matter because city officials were covering up their involvement. Kenton District Court 78-M-1178.

(h) 1978 — Warrant for criminal trespassing at my home — Warrant signed by Kenton County Attorney John Elfers on an affidavit of criminal attorney, Richard Slukich, a stranger to an illegal foreclosure proceeding. 78-M-2912 Ex. B.

(i) 1978 — Warrant for alleged burglary at my home by me; procured on false affidavit of police officer Henry Warden, signed by District Judge Douglas Stephens. Judge Stephens had full knowledge that the affidavit was false and fraudulently intended — August 14, 1978. Ex. C.

(j) 1986 — Mr. John Elfers, Kenton County Attorney caused two illegal warrants and/or summons to issue against me on false affidavits and contra to K.R.S. 15.825(4), which were later dismissed. 78-M-1723 and 78-M-1724. Ex. D.

8. The foregoing struggles culminated in Peoples Liberty Bank (1) refusing mortgage payments on my home at 736 Highland Avenue and illegally foreclosing; (2) neglecting to follow through on a rehab loan, due to the City's policy of discrimination in the housing program, Kenton Circuit Court No. 31053; and (3) consorting to illegally force the tenant out of and illegally foreclosing on property owned by American Urban Peoples Economic Development Corporation, of which I was the chief executive officer (Kenton Circuit Court No. 31054).

9. In Case No. 31053, Judge Goodenough knew that Mr. Nelson never attended a hearing before the Master Commissioner, that there was no valid appraisal of my home or other property, and that the Bank and Mr. Nelson's efforts were fraudulently intended.

10. Under Kentucky law, a judgment foreclosing a mortgage does not confer possession and neither can there be a valid sale without a valid appraisal.

11. For that reason, Peoples Liberty Bank sought possession of my home in another action, which I challenged in Kenton Circuit Court No. 33430.

12. Peoples Liberty Bank asked for dismissal of that action with prejudice, which was granted. No. 33430.

13. The Kentucky Court of Appeals on May 2, 1980, concluded, "It is the bank not the Thompsons as they perceive, who are prejudiced with respect to the proceedings." Ex E.

14. Thus, it is indisputable that Peoples Liberty Bank (1) had no right to hire any police officer to forcibly take my property, and (2) that such taking was unlawful and was only allowed because Plaintiffs were blacks.

15. City and County officials perceived American Urban Peoples Economic Development Corporation as a semblance

of economic growth that Blacks could participate in in the City of Covington.

16. To prevent American Urban Peoples Economic Development Corp. from being a reality, City official Joseph Condit and County Attorney John Elfers did everything in their power to cause the demise of the Corporation by forcing the tenant out of possession and promising a board member of the Corporation an opportunity to buy the corporate property without any money down. (31054).

17. Prior to the foreclosure in 31054, Peoples Liberty Bank had been providing free legal service for American Urban Peoples Economic Development Corp. to show good faith toward economic growth in the Black community; but, due to its financial relationship with the City of Covington, had to follow City policy.

18. City officials, Mr. Richard Nelson and Mr. John Elfers, knew if they could get the tenant to move out of the corporate property, they could take over the corporate property without a court fight. (The Corporation could not make mortgage payments and could not afford an attorney to fight racism.)

19. Bank officials told other board members that they could buy the corporate property with no money down. (Assets of the Corporation were about $50,000 and liabilities about $15,000.)

20. Mr. John Elfers was able to convince Mr. George Gover, a board member of American Urban Peoples Economic Development Corp., to encourage the tenant leasing the corporate property not to invest any more money in remodeling the property, but to leave because the Bank and the City were going to take everything I owned and/or had an interest in, including assets of American Urban Peoples Economic Development Corp.

21. The Bank promised Mr. Gover he could purchase the property at the foreclosure sale, and Mr. Gover took over possession with a Twenty-five Dollar ($25.00) payment to the court.

22. Mr. Gover was able to get the tenant to leave and give the keys to him (Mr. Gover).

23. When I confronted Mr. Gover, he called Mr. Elfers and Covington police officers who threatened to arrest me if I did not leave.

24. On or before March 23, 1977, Covington Policeman Jim Mercer wilfully lied to a Kenton County Grand Jury, resulting in a True Bill against me. Kenton Circuit Court No. 17932. Ex. F.

25. Commonwealth Attorney Mr. Frank Trusty wilfully lied claiming he personally handed me a copy of the indictment, when in fact, he never confronted me with the indictment. Ex. F.

26. Mr. Trusty also lied claiming he could not locate me. I was in the courthouse at least twice a week.

27. During the calendar year 1977, City Manager Joseph Condit and City Solicitor Douglas Stephens maliciously prosecuted my Wife, Patricia Thompson, in Kenton Circuit Court Case No. 17936, and me in Kenton Circuit Court cases 18227 A & B.

28. As of today, my wife, Patricia Thompson, is still on O/R in case No. 17936.

29. City Solicitor, Douglas Stephens, had case No. 18227 A & B continued until February 27, 1978.

30. In January 1978, Joseph Condit and Douglas Stephens became Kenton District Judges.

31. After four continuances requested by the City Solicitor's office, case No. 18227 A & B were to be heard on April 4, 1978.

32. The City Solicitor failed to show to represent the City of Covington on April 4, 1978, or to give any reason for his failure to show.

33. This default should have been sufficient to dismiss these malicious charges by city officials, but they still linger today.

34. On or about April 3, 1978, Mr. Richard Nelson wrote me a letter threatening to disturb the peace and dignity of my home at 736 Highland Avenue.

35. I called Mr. Nelson concerning his letter of April 3, 1978, and Mr. Nelson told me if I did not leave my home, he was coming over with the sheriff to take possession of my home.

36. I advised Mr. Nelson I was not leaving.

37. Mr. Nelson threatened me with, . . . "we will have you taken care of". When I asked Mr. Nelson what he meant, he hung up.

38. On or about April 12, 1978, Mr. Nelson had the Honorable Judge Daniel Goodenough to sign a "Writ of Possession" for my home at 736 Highland without notice to me or any legal authority to do so. Ex. G.

39. Judge Goodenough knew that whatever action Mr. Nelson, Mr. Haile, and/or Peoples Liberty Bank took with the Writ of Possession signed on April 12, 1978, it would be illegal.

40. Judge Goodenough's action encouraged local officials to plan and execute a heinous act which might have cost me my life had Officer Tucker struck me with his nightstick, instead of accidentally striking Officer Epperson.

41. On or about April 15, 1978, three (3) Covington police officers, Epperson, Finan, and Tucker, beat me and threatened to "put me in the river." 78-M-1186.

42. I filed charges against these police officers with the Mayor and City Commissioners as required by State Law K.R.S. 95.470, etc.

43. Even though I informed City officials that police officer Todd Finan had threatened me with a gun other than his service revolver, I never had an opportunity to confront Officer Finan apparently because his mission was authorized and sanctioned by local officials. Ex. H, I, J, K, L.

44. City officials neglected to hold a hearing into the matter because they knew that Douglas Stephens, Joseph Condit, John Elfers, Richard Nelson and Ralph Haile knew of and/or planned the attack on me.

45. On July 19, 1978, Mr. Nelson had the Sheriff Deputies execute the void "Writ of Possession" signed by Judge Goodenough on April 12, 1978. Ex. M.

46. On July 19, 1978, Mr. Nelson and Mr. Haile hired an unknown number of Covington Police Officer to assist the Sheriff Deputies in executing the void "Writ of Possession." Ex. N.

47. After the Sheriff Deputies had placed my possessions upon the street, police officers hired by the Bank produced a lease agreement between police officers and the Bank. Ex. O.

48. The police officers threatened me with bodily harm if I did not leave my home.

49. Police officers paid by Peoples Liberty Bank occupied my home on a 24-hour a day basis until July 27, 1978, when a group of friends and neighbors went to city hall to ascertain why police officers were occupying my home.

50. The Mayor and City Commissioners said they had been informed that my home had been sold to Richard Slukich and that the police officers had left.

51. The City Commissioners refused to discuss why the police officers were on private property, because they knew Covington police officers had no business on private property.

52. Everyone was aware of the fact (including myself) that the police had no jurisdiction over ownership or possession of my home, and if the April 12, 1978 Writ of Possession was valid, then Judge Goodenough would have to be the one to enforce his order of April 12, 1978 by holding me in contempt of court.

53. On or about July 27, 1978, Richard Nelson and Ralph Haile hired Richard Slukich, a prominent criminal attorney, gave him a deed to my home for $1 and other good and valuable consideration to assist in illegally taking what they could not legally take (my home at 736 Highland Avenue).

54. On or about July 29, 1978, Mr John Elfers signed a warrant on an affidavit of Richard Slukich, charging me with criminal trespassing at my home, knowing full well that he (Elfers) had no legal authority to sign a warrant for my arrest, and that he (Elfers) was aiding and abetting Richard Nelson, Ralph Haile, and Peoples Liberty Bank in fraudulent and wanton misconduct. Ex. B.

55. To help facilitate this fraud upon the court, Judge

Condit gave as a condition of my release that I could not go home, with the full knowledge that he had no jurisdiction to do so. 78-M-2912.

56. I was to be tried on the criminal trespass charges on August 14, 1978, before Judge Stephens. 78-M-2912.

57. On August 14, 1978, Judge Stephens decided to continue the trial until August 15, 1978.

58. On August 14, 1978, Judge Stephens also signed a felony charge warrant (first degree burglary) against me on the basis of an affidavit signed by police officer Henry Warden. Ex. C.

59. Judge Stephens was well aware that there was no legal basis for signing the burglary charges against me, but as I was a Black, Judge Stephens knew that legal channels were not open to me in Kenton County.

60. When I appeared in court on August 15, 1978, Judge Stephens set the trial for August 25, 1978, and ordered me jailed until the trial. 78-M-2912.

61. Judge Stephens could cite no reasons for jailing me, and to evade legal action (writ of prohibition) against him, Judge Stephens had Cindy Smith to sign the Order of Commitment. 78-M-2912. Ex. P.

62. Even though Judge Stephens was presiding on the bench on August 15, 1978, Judge Condit signed a pre-trial order for Monday, August 21, 1978, and switched cases to be tried; Case No. 78-M-2912 to Case No. 78-M-1186.

63. I was notified in jail on August 21, 1978, that instead of criminal trespassing charges, 78-M-2912, I would be tried for disorderly conduct, resisting arrest, and DUI; and the assault charge would be dismissed. 78-M-1186.

64. I objected; to no avail.

65. On April 15, 1978, when police officers beat me, the police officers were tailing me. They (Covington police officers) had seen me leave my brother's home, thinking I was on the way home. They were in pursuit of me. However, when I went to a pizza parlor at 18th and Madison, it took the policemen by surprise.

66. Unknown to me at the time, Officer Epperson knew I

had left my brother's house headed south on Russell Street, and he was in pursuit of me.

67. I saw a police car turn onto 15th Street off Madison as I approached Madison on 15th Street.

68. I had no idea who the policeman was or that he was after me.

69. For the trial in 78-M-1186, the County Attorney, Mr. John Elfers, summoned the people who were at my brother's home and who had left no later than 7:30 p.m. that evening.

70. My attorney, Mr. Henry Curtis, never discussed my case with me, never dealt with the facts of the case, and allowed the prosecutor to make improper statements and arguments, without objections.

71. When I told my attorney that I wanted to appeal, he admitted that he had made a deal with the prosecutor and that he could not appeal.

72. Even though Judge Stephens supposedly had nothing to do with 78-M-1186, when I attempted to file an appeal, Judge Stephens would not let the clerk accept my appeal without an order signed by Judge Schmaedecke, pursuant to R.Cr. 12.76.

73. On September 29, 1978, Judge Stephens attempted to try me for the alleged criminal trespassing charge (78-M-2912) with 3 of the 6 members of the jury selected having served on the jury in 78-M-1186.

74. When I objected, Judge Stephens ordered me jailed on a $5,000 bond. (I had already asked Judge Stephens to recluse himself.)

75. Judge Stephens told District Court Clerk Mary Ann Woltenberg to sign the Order of Commitment, knowing his activity to be wanton misconduct. Ex. Q.

76. On January 5, 1979, Judge Stephens, on his own motion, ordered a pre-trial conference for January 11, 1979, with the trial date set for January 16, 1979. 78-M-2912.

77. The prosecution failed to file a pre-trial brief as requested by the court's pre-trial order.

78. On January 11, 1979, I reminded Judge Stephens that Kenton Circuit Court case No. 33430 was still pending and

the District Court had no jurisdiction to try me on criminal trespassing charges at my home.

79. On a motion of the Prosecutor, this case was to be continued until Kenton Circuit Court case No. 33430 was resolved.

80. In the summer of 1979, the State Board of Election ordered my name placed on the November ballot as a candidate for Mayor of the City of Covington. Because my name was ordered placed on the November 1979 ballot as a candidate for Mayor, County Officials decided to prosecute me on frivolous warrant signed by Judge Stephens on Covington Police Officer Warden's affidavit. The Grand Jury failed to indict after two attempts. Yet, county officials let it be known they did not want a Black's name on the ballot.

81. Judge Stephens, Mr. John Elfers — Kenton County Attorney, and other local officials who were opposed to Blacks being involved in the political process in Kenton County, decided to show Blacks what their fate would be should they insist on being actively involved in the election process as a candidate for public office.

82. Judge Stephens, on his own motion, ordered a trial for September 13, 1979, on the criminal trespass charges. 78-M-2912.

83. Judge Stephens and Mr. Elfers were aware that the one-year statutory period had expired on the charge and that Circuit Court case No. 33430 was still pending. Ex. E.

84. Over my objections, Judge Stephens permitted Mr. Richard Slukich to assist the Prosecutor in the prosecution of the criminal trespass charge, knowing full well that Mr. Slukich was hired specifically to bring these false charges. 78-M-2912.

85. Judge Stephens made improper remarks to the jury, allowed the Prosecutor to make improper remarks and arguments, refused to order Mr. Slukich to answer question, refused to cite the law of the case, and refused to properly instruct the jury.

86. Because of undo pressure from Judge Stephens, the jury fined me $500.00, and I appealed.

87. Even though I appealed 78-M-2912 and the case was in the Circuit Court, on November 2, 1979, Judge Stephens signed a warrant for my arrest to intimidate me and my supporters in the upcoming election. Ex. R.

88. To support this fraudulent activity and make it known that Judge Stephens had the total support of the County, Kenton Circuit Judge Gilliece on November 5, 1979 signed a warrant for my arrest. Ex. S.

89. These judges made public statements to the effect that if I should show up at City Hall for the vote tabulation, I would be arrested.

90. On November 26, 1979, these warrants were executed.

91. When I appeared before Judge Stephens on November 27, 1979, Judge Stephens claimed I was in contempt of court in 78-M-2912, even though 78-M-2912 was on appeal.

92. Judge Stephes summarily punished me by giving me 90 days in jail and fining me $250.00 plus costs. Ex. T.

93. Judge Stephens called this action 79-M-5251.

94. Some of these issues have been in Federal Court and were dismissed for jurisdictional reasons.

95. Relief can be sought in Federal Court after Plaintiffs have exhausted state law remedies.

96. After the Judgment in Kentucky Court of Appeals case No. 79-CA-1456 MR, Plaintiffs were legally entitled to possession of their home and other possessions, and Defendants were aware of this.

/s/ EDDIE THOMPSON, JR.

Subscribed and sworn to before me this 10th day of September 1986.

/s/ ISIAH SMITH
Notary

My Commission Expires: 3/10/88

WHEREFORE Plaintiffs pray for Judgment against Defendants, jointly and/or severally, as follows:

1. One Hundred Fifty Thousand Dollars ($150,000.00) actual damage for wanton misconduct and wanton taking of Plaintiffs' real and personal property in Kenton Circuit Court No. 31053.

2. Two Hundred Fifty Thousand Dollars ($250,000.00) for unlawful attempts and threats upon the life of Eddie Thompson, Jr. by 3 Covington Police Officers, one of whom was admittedly hired by Peoples Liberty Bank; and the clumbsy attempt by local officials to cover this heinous act by preventing a public hearing before the Mayor and City Commission upon the verified complaint of Eddie Thompson, Jr.

3. One Hundred Thousand Dollars ($100,000.00) for unlawful harrassing and jailing of Eddie Thompson, Jr.

4. Two Hundred Thousand Dollars ($200,000.00) for wanton misconduct and wanton taking of American Urban Peoples Economic Development Corporation's real and personal property.

5. Five Hundred Thousand Dollars ($500,000.00) punitive damages.

6. Trial by jury.

7. Any othe good and proper relief they may be entitled.

/s/ EDDIE THOMPSON, JR., Pro Se
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/s/ PATRICIA THOMPSON, Pro Se
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EXHIBIT E TO COMPLAINT

OPINION RENDERED: May 2, 1980
NOT TO BE PUBLISHED

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS

NO. 79-CA-1456-MR

PATRICIA THOMPSON and
EDDIE THOMPSON, JR.
APPELLANTS

v.

PEOPLES LIBERTY BANK
APPELLEE

Appeal From Kenton Circuit Court
Honorable William R. Dunn, Judge
Action No. 33430

AFFIRMING

* * *

BEFORE: HAYES, Chief Judge, BREETZ and WILHOIT, Judges.

HAYES, CHIEF JUDGE. Eddie Thompson, Jr. and Patricia Thompson appeal from an order and judgment of the Kenton Circuit Court dismissing a forcible detainer proceeding and the appeal therefrom. The Peoples Liberty Bank and Trust Company of Covington, Kentucky, filed the complaint for forcible detainer in Kenton Quarterly Court in September, 1977. The quarterly court rendered judgment for the bank on September 26, 1977 and ordered that a writ of restitution issue. The writ of restitution was never executed. The

Thompsons appealed the quarterly court judgment to Kenton Circuit Court on September 28, 1977. No action was taken by either party to the proceeding until March 5, 1979 when the bank moved to dismiss the case as being moot on the grounds that the bank had obtained the property pursuant to another Kenton Circuit Court action and had conveyed same in July, 1978. The Thompsons filed a motion for a trial date on March 9, 1979. On March 13, 1979 the circuit court entered a judgment dismissing the case with prejudice as being moot. From this judgment the Thompsons appeal.

The Thompsons have proceeded pro se in thiese proceedings and apparently in the several actions in the various Kenton courts, obviously a substantial contributing factor to the Thompsons' confusion and lack of understanding concerning this proceeding. Apparently the Thompsons no longer have the property in question and ask this court to order the circuit court to put them in possession of such property. However, the simple fact is, that the property was not taken from them as a result of this case, but such was accomplished in a separate circuit court action. The Thompsons are attempting to attack a judgment over which this court has no jurisdiction. The circuit court ordered the action dismissed explaining to the Thompsons in a hearing that that was the most relief which it could grant, i.e. the bank's forcible detainer proceeding would be dismissed with prejudice. Since the Thompsons had not been relieved of their property as a result of the forcible detainer proceeding but rather had been so relieved as a result of a circuit court proceeding, the dismissal of the forcible detainer proceeding could not result in the Thompsons being placed in possession of the property in question. The circuit court was not in error in dismissing the proceedings with prejudice. It is the bank not the Thompsons, as they perceive, who are prejudiced with respect to the proceedings.

Since we have no jurisdiction over federal courts, we will not comment on the issue raised pertaining thereto.

The judgment is affirmed.

ALL CONCUR.

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ATTORNEY FOR APPELLEE:
Richard Nelson
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[CERTIFIED BY ED F. SCHROEDER, CLERK
BY JUDY SETTER, D.C.]

KENTON CIRCUIT COURT
THIRD DIVISION
CASE NO. 86-CI-1535

EDDIE THOMPSON, et al.
PLAINTIFFS

v.

CITY OF COVINGTON, et al.
DEFENDANTS

ORDER
(Entered November 17, 1986)

All pending motions will stand submitted to the court without oral argument, on Tuesday, December 2, 1986. Any party desiring to file a memorandum or other document of record in support of or in opposition to a pending motion may do so prior to said date.

Pursuant to CR 77.04, the clerk is directed to mail copies hereof to all parties or their attorneys of record.

/s/ J. ARNOLD, J.
Special Judge, Kenton Circuit Court

KENTON CIRCUIT COURT
THIRD DIVISION
CASE NO. 86-CI-1535

EDDIE THOMPSON, JR., et al.
PLAINTIFFS

v.

CITY OF COVINGTION, et al.
DEFENDANTS

ORDER
(Filed April 23, 1987)

This action stands submitted to the court on motions of the parties as appear of record. Pursuant to CR 78(2), this court on November 17, 1986 ordered all motions under submission on Tuesday, December 2, 1986; said order further allowed the parties until December 2, 1986 to file memorandum or other document in support of or in opposition to any pending motion.

1. The court has carefully scrutinized the complaint and researched plaintiffs' alleged causes of action against the City of Covington and Officers Epperson, Finan and Warden set forth in the complaint, and specifically in paragraphs 7, 8, 15, 16, 17, 18, 23, 24, 27, 28, 41, 42, 43, 44, 46, 47, 48, 49, 50, 51 and 65, 66, 67. All the actions are alleged to have occurred more than five years prior to the filing of this action (September 12, 1986). All of plaintiffs' causes of action, according to the assertions contained in the complaint, are subject to the limitations of actions provisions contained in KRS 413.140 and KRS 413.120.

2. The court has carefully scrutinized the complaint and researched plaintiffs' alleged causes of action against Joseph Condit set forth in the complaint, and specifically in paragraphs 7(F), 16, 27, 44 and 55. All of the actions are alleged to have occurred more than five years prior to the filing of this action (September 12, 1986). All of plaintiffs'

causes of action, according to the assertions contained in the complaint, are subject to the limitations of actions provisions contained in KRS 413.140 and KRS 413.120. Further, a prosecutor is immune from suit for actions taken while performing the duties of a prosecutor; a judge is immune from suit for actions taken in his judicial capacity. *Dugger* v. *Off. 2nd, Inc.*, Ky.App., 612 SW2d 756 (1980); *Commonwealth* v. *Tartar*, Ky., 239 SW2d 265 (1951).

3. The court has carefully scrutinized the complaint and researched plaintiffs' alleged causes of action against John Elfers set forth in the complaint, and specifically in paragraphs 7(h), 7(j), 16, 18, 20, 23, 44, 54, 81, 83, 84, 85. With the exception of paragraph 7(j), all of the actions are alleged to have occurred more than five years prior to the filing of this action (September 12, 1986). With the exception of paragraph 7(j), plaintiffs' causes of action, according to the assertions contained in the complaint, are subject to the limitations of actions provisions contained in KRS 413.140 and KRS 413.120.

In reference to the allegations contained in Paragraph 7(j), a county attorney is immune from suit while performing his duties. Copies of the 1986 criminal complaints filed against Mr. Thompson are attached to his complaint as Exhibit D. The complaints clearly show that Mr. Elfers was not the affiant in either case; nor was he the verifying officer. Copies of the summons issued pursuant to the complaints are also attached to Mr. Thompson's complaint as Exhibit D. Mr. Elfers was not the issuing officer in reference to either summons. Copies of the same summons are attached to Mr. Elfers' motion to dismiss which clearly shows that they were served by a deputy sheriff, not Mr. Elfers.

Paragraph 7(j) of the complaint fails to sufficiently allege or show any act by Mr. Elfers that was outside the scope of his duties. County attorneys are charged with the prosecution of misdemeanor cases by statute. KRS 15.725(2). The allegations of paragraph 7(j) fail to state a cause of action against Mr. Elfers upon which relief can be granted. CR 12.02, CR

9.02, Bertelsman & Philipps, Ky. Pac., 4th Ed., Civil Rule 12.02, Section 11 at 220-221.

4. The court has carefully scrutinized the complaint and researched plaintiffs' alleged causes of action against Douglas Stephens set forth in the complaint, and specifically paragraphs 7(i), 27, 44, 58 and 59, 60, 61, 62, 72, 73, 74, 75 and 81 through 87. All of the actions are alleged to have occurred more than five years prior to the filing of this action (September 12, 1986). All of plaintiffs' causes of action, according to the assertions contained in the complaint, are subject to the limitations of actions provisions contained in KRS 413.140 and KRS 413.120.

5. The court has carefully scrutinized the complaint and researched plaintiffs' alleged causes of action againt Peoples Liberty Bank, Richard Nelson and Ralph Haile set forth in the complaint, and specifically in paragraphs 8, 9, 14, 17, 18, 19, 20, 21, 34, 35, 36, 37, 38, 39, 44, 45, 46, 47, 48, 49, 53 and 54. All of the alleged actions by these named defendants are alleged to have occurred more than five years prior to the filing of this action (September 12, 1986). All of plaintiffs' causes of action, according to the assertions contained in the complaint, are subject to the limitations of actions provisions contained in KRS 413.140 and KRS 413.120.

Therefore, IT IS ORDERED as follows:

A. The motion of Defendants City of Covington, Henry Warden, Thomas E. Epperson and Tom Finan to dismiss the complaint against them is SUSTAINED, and said defendants shall recover of plaintiffs their costs herein expended.

B. Good cause having been shown by the record and affidavit of Hon. Nathan Goldman, counsel for Joseph Condit, said Joseph Condit's motion for an extension of time to answer or otherwise plead in this case is SUSTAINED. His CR 12.02(F) motion is SUSTAINED, and Joseph Condit is hereby DISMISSED from this action and shall recover of plaintiffs his costs herein expended.

C. Good cause having been shown by the record and affidavit of Hon. Martin J. Huelsmann, counsel for John Elfers, said John Elfer's motion for an extension of time to answer or

otherwise plead in this case is SUSTAINED. His CR 12.02(F) motion is SUSTAINED and John Elfers is hereby DISMISSED from this action and shall recover of plaintiffs his costs herein expended.

D. Good cause having been shown by the record and affidavit of Hon. Nathan Goldman, counsel for Douglas Stephens, said Douglas Stephens' motion for an extension of time to answer or otherwise plead in this case is SUSTAINED. His CR 12.02(F) motion is SUSTAINED, and Douglas Stephens is hereby DISMISSED from this action and shall recover of plaintiffs his costs herein expended.

E. Good cause having been shown by the record and motion of Hon. Richard S. Nelson, counsel for himself, Peoples Liberty Bank and Ralph Haile, said named defendants' motion for an extension of time in which to answer or otherwise plead in this case is SUSTAINED. Said defendants' CR 12.02(F) motion is SUSTAINED, and Peoples Liberty Bank, Richard Nelson and Ralph Haile are hereby DISMISSED from this action and shall recover of plaintiffs their costs herein expended.

F. All other pending motions are OVERRULED as MOOT.

G. This is a final and appealable order.

/s/ J. ARNOLD, J.
Special Judge, Kenton Circuit Court

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS

NO. 87-CA-1132-MR

PATRICIA THOMPSON, ET AL.
APPELLANTS

v.

CITY OF COVINGTON, ET AL.
APPELLEES

Appeal From Kenton Circuit Court
Action No. 86-CI-001535

ORDER

This Court has considered appellants' pro se motions to advance this appeal, for oral argument, and for enlargement of time to file their reply brief, to which no responses were filed.

The Court ORDERS the motion for enlargement of time be GRANTED. Appellants' tendered reply brief is ORDERED FILED the date of entry of this order.

The Court further ORDERS the motion for oral argument be DENIED.

The Court ORDERS the motion to advance be DENIED.

ENTERED: January 7, 1988

/s/ J. W. HOWERTON
Chief Judge, Court of Appeals

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS

NO. 87-CA-1132-MR

PATRICIA THOMPSON AND
EDDIE THOMPSON

APPELLANTS

v.

CITY OF COVINGTON, THOMAS E. EPPERSON,
TODD FINAN, HENRY WARDEN, JOSEPH CONDIT,
ETC. DOUGLAS STEPHENS, ET AL

APPELLEES

Appeal From Kenton Circuit Court
Action No. 86-CI-1535

ORDER

All briefs have now been filed in this appeal and it is ready for submission in accordance with CR 76.26. The Court notes that no appellant in this case is represented by an attorney. Therefore, pursuant to CR 76.16(4), the Court hereby ORDERS that this appeal be submitted to a panel for decision without oral argument.

ENTERED January 20, 1988

/s/ J. W. HOWERTON
Chief Judge, Court of Appeals

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS

NO. 87-CA-1132-MR

PATRICIA THOMPSON
EDDIE THOMPSON, JR.
APPELLANTS

v.

CITY OF COVINGTON, THOMAS E. EPPERSON,
TODD FINAN, HENRY WARDEN, ET AL.
APPELLEES

Appeal From Kenton Circuit Court
Action No. 86-CI-1535

ORDER

This Court has considered appellants' pro se motion for leave to present oral arguments, and the response thereto.

The Court ORDERS the motion DENIED.

ENTERED: MARCH 4, 1988

/s/ J. W. HOWERTON
Chief Judge, Court of Appeals

RENDERED: August 19, 1988; 10:00 a.m.
NOT TO BE PUBLISHED

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS

NO. 87-CA-1132-MR

PATRICIA THOMPSON
EDDIE THOMPSON, JR.
APPELLANTS

v.

CITY OF COVINGTON; THOMAS EPPERSON, TODD FINAN, HENRY WARDEN, POLICEMEN; JOSEPH CONDIT, FORMER CITY MANAGER, EX-DISTRICT JUDGE, CITY SOLICITOR; JOHN ELFERS, KENTON COUNTY ATTORNEY; DOUGLAS STEPHENS, FORMER DISTRICT JUDGE AND FORMER CITY SOLICITOR; PEOPLES LIBERTY BANK; RICHARD NELSON; RALPH HAILE; AND UNNAMED PERSONS
APPELLEES

Appeal From Kenton Circuit Court
Honorable Jack Arnold, Special Judge
Action No. 86-CI-1535

AFFIRMING

BEFORE: HOWERTON, Chief Judge; CLAYTON, and DYCHE, Judges.

CLAYTON, JUDGE. Patricia and Eddie Thompson appeal from a judgment of the Kenton Circuit Court dismissing their complaint against the appellees. The allegations contained in the complaint arise from a number of incidents involving the appellants and the legal system since approximately 1963. The trial court used a great deal of patience in scrutinizing

the rambling pro se complaint alleging various acts of wrongdoing against the appellees who are, for the most part, public employees. The trial court determined that most of the allegations occurred more than five years prior to the filing of the action on September 12, 1986, and were therefore barred by the Statute of Limitations contained in KRS 413.140 and KRS 413.120. Further, most allegations against public employees were determined by the trial court to be barred as the employees were immune from suit while performing their duties.

The appellants appeal pro se the trial court's dismissal and while it is somewhat difficult to understand their arguments, we find that most of them can be addressed very simply.

Their first argument is that the Statute of Limitations applicable in the present case is a fifteen year one pursuant to KRS 413.090 dealing with an action upon a written contract. The appellants argue that the basis for the complaint was their mortgage agreement with People's Liberty Bank. We disagree. The complaint alleges tort actions seeking damages for wanton misconduct, wanton taking, unlawful attempts and threats upon the appellants' lives, harassment, and asking for punitive damages. Those are clearly tort actions and the applicable Statutes of Limitation are contained in KRS 413.140(1)(a) dealing with actions for injury to the person and KRS 413.120(7) which provides a five year limitation on actions involving rights of persons not arising from contracts or otherwise enumerated. Therefore, we hold that the trial court did not err in dismissing actions which were more than five years old.

The second argument is whether the trial court erred in dismissing the complaint prior to the filing of answers on behalf of the appellees. CR 12.02(f) allows the court to dismiss an action for failure to state a claim upon which relief can be granted. When such a motion is made, the court is required to construe the pleadings most liberally in favor of the plaintiff and take all allegations in a complaint to be true. *Gall* v. *Scroggy*, Ky. App., 725 S.W.2d 867 (1987). Further, we recognize that a motion to dismiss the complaint for

failure to state a claim should never be granted unless it appears that the plaintiff would not be entitled to relief under any set of facts which could be proved in support of his claim. *Pari-Mutual Clerks' Local 541* v. *Ky. Jockey Club*, Ky. App., 551 S.W.2d 801 (1977). In the case at bar, it is clear from the face of the complaint that this action was not timely filed and was therefore barred by the applicable Statute of Limitation. Further, the allegations dealing with prosecutors and judges concern actions taken while in the performance of their official duties and therefore subject to their immunity. *See Dugger* v. *Off 2nd, Inc.*, Ky. App., 612 S.W.2d 756 (1981), *Pierson* v. *Ray*, 386 U.S. 547, 87 S.Ct. 1213, 18 L.Ed.2d 288 (1967), and *Commonwealth* v. *Tartar*, Ky., 239 S.W.2d 265 (1951).

As to the appellants' argument that the appellees were in default in that they failed to file an answer, we need only to refer them to CR 12.01 which indicates that when a defendant files a motion pursuant to Rule 12, it tolls the time for filing a responsive pleading.

The above-stated rationale makes the last two issues of the appellant moot as because of the failure of the appellant to timely file his action.

We note that many of these same issues have apparently been raised in Federal Court and, in fact, the appellant has had a trial involving some of these matters. The appellants have clearly had their day in court.

The judgment of the Kenton Circuit Court is affirmed.

ALL CONCUR.

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SUPREME COURT OF KENTUCKY

88-SC-683-D
(87-CA-1132)

PATRICIA THOMPSON
and EDDIE THOMPSON, JR.
MOVANTS

v.

CITY OF COVINGTON, ET AL.
RESPONDENTS

Kenton Circuit Court
No. 86-CI-1535

ORDER DENYING DISCRETIONARY REVIEW

The motion of the movants for a review of the decision of the Court of Appeals is denied.

ENTERED March 8, 1989.

/s/ ROBERT F. STEPHENS
Chief Justice